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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,664

08/18/2006

Guido Sampermans

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7651

53609

7590

01/15/2009

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EXAMINER

EIDE, HEIDI MARIE

ART UNIT

PAPER NUMBER

3732

NOTIFICATION DATE

DELIVERY MODE

01/15/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RockMail@reinhartlaw.com

Office Action Summary	Application No. 10/549,664	Applicant(s) SAMPERMANS, GUIDO	
	Examiner HEIDI M. EIDE	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/30/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed December 30, 2005 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the foreign reference listed has not been supplied by the applicant. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the transfer tray, perforations and gingival part must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

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and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

Claim Objections

Claim 7 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitations "the exact bracket positions," "said clear transfer tray," and "the exact position" in lines 8-9. There is insufficient antecedent basis for these limitations in the claim.

Claim 2 recites the limitations "the clear transfer tray" and "the dimensions of the bracket base" in line 2. There is insufficient antecedent basis for these limitations in the claim.

Claim 3 recites the limitation "the gingival parts" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 4 recites the limitation "the exact position" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the exact bracket positions" and "the exact position" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the bracket base" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the gingival part" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen et al. 3,738,005. Cohen discloses an indirect bracket placement method for correctly positioning brackets on a patient's teeth, comprising the steps of providing a model of the patient's teeth 10, providing a reference marking 14 on the model, wherein the reference marking is visible on the transfer tray, as illustrated in fig. 3, and providing holes or perforations, the brackets are retained in the holes or perforations, at the exact bracket positions in the transfer tray, the hole allowing placement of the brackets in the exact position, wherein the holes or perforations provided in the transfer tray are of the dimension of the bracket base (col. 2, ll. 47-61, col. 3, ll. 11-15).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilliard 6,293,790. Hilliard teaches a tool for providing holes in a clear transfer tray, the tool comprising on a first side a reference for correct placement of the tool and on a second side a cutting plate, the first and second side co-operating to cut away from the clear transfer tray wherein the second side further comprises a reference for correct placement of the tool (col. 1, ll. 11-17, col. 7, ll. 31-47). While Hilliard does not specifically teach the cutting plate is dimensioned as a bracket base and the reference is a cross, Hilliard teaches various configurations of different sizes and shapes (col. 3, ll. 16-25) including rectangles, therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Hilliard since these parameters are deemed matters of design choice well within the skill of the ordinary artisan and since it has been held that the configuration of the reference mark was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed mark was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 IV B).

Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al. 3,738,005 as applied to claims 1 and 8 above, and further in view of Phan et al. 2004/0166462 (Phan). Cohen teaches the invention as discussed above, however, does not teach the gingival parts of the transfer tray are removed to enable removal of the tray after placement. Phan teaches the gingival parts of the transfer tray are removed as illustrated in figs 5A-5B. It would have been obvious to one having

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ordinary skill in the art at the time of the invention to modify Cohen in view of Phan in order to allow for more patient comfort.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. EIDE whose telephone number is (571)270-3081. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Heidi Eide
Examiner
Art Unit 3732

/John J Wilson/
Primary Examiner
Art Unit 3732

/Heidi M Eide/
Examiner, Art Unit 3732

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